



Federal Communications Commission
445 12th Street, SW
Washington D.C. 20554

August 15, 2016

Re: Expanding Consumers' Video Navigation Choices, MB Docket No. 16- 42; Commercial Availability of Navigation Devices, CS Docket No. 97-80

Dear Chairman Wheeler:

We write to support the Commission's proposed rules to open the market for set-top boxes, and to respond to the recent letter submitted to you by the U.S. Copyright Office. The clear direction adopted by Congress in 1996 has yet to be realized. We believe the proposed rules will help open a technology environment that today is very closed, with the result of improved competition, greater innovation, and streamlined interoperability, all to the benefit of consumers. The Commission need not, and must not, allow an overbroad interpretation of copyright law and policy to stand in the way.

As a technology company, a non-profit foundation, and a global community, Mozilla holds copyrights, trademarks, and other exclusive rights. In the pursuit of our mission, we have championed open licenses to share our works with others. Through this, we see an opportunity to harness intellectual property to promote openness, competition, and participation in the Internet economy.

As a rightsholder, Mozilla believes copyright plays a crucial role in the economy, and proposals that threaten the exercise of properly scoped exclusive rights should be viewed skeptically. The proposed set-top box rules do not constitute such a proposal. At worst, the rules conflict with only the most maximalist copyright policy views, those that would stretch statutory interpretation and precedent to allow for indefinite downstream control by rightsholders, impeding the development of new technologies and harming consumers.

The Copyright Office's views on the Commission's proposal take us down a dangerous road. The letter argues that the proposed rules equate to an encroachment on the exclusive right to license protected works. If these arguments are taken at face value, any terms the cable company and set-top box vendor agree to, although governed fundamentally by state law, would effectively supersede the Commission's regulatory authority under Section 629 of the Telecommunications Act to promote competition in the video navigation device market.

Copyright law confers a set number of rights to rightsholders, and is not meant to convey total control, as evidenced by the existence of numerous limitations and exceptions, such as to facilitate access for individuals with disabilities. The exclusivity offered under copyright law must not be read so broadly as to render moot these critical legal protections for innovation, creativity, and user interests.

We have made these concerns known to the Copyright Office on previous occasions by identifying other areas of its expertise where the delicate balance of copyright law has been abused to confer broad restrictive power to rightsholders, undermining fair use and posing risk of harm to competition, creativity, and innovation.¹ We are disappointed to see the Copyright Office continuing down this same dangerous road with its recent letter. We strongly encourage the Commission to take the law on its face, and continue to fulfill its own, long-established statutory obligations to promote competition and openness in the set-top box market.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chris Riley". The signature is fluid and cursive, with the first name "Chris" written in a larger, more prominent script than the last name "Riley".

Chris Riley
Head of Public Policy
Mozilla

¹ We articulated our arguments in depth in the context of the Copyright Office's Section 1201 Study, highlighting the combination of law and technology associated with content control measures that in practice empowers rightsholders to prohibit fair use and other lawful, and desirable, activity by end users. Comments of Mozilla, Section 1201 Study: Notice and Request for Public Comment, Docket No. 2015-8, <https://blog.mozilla.org/netpolicy/files/2016/03/Mozilla-comments-on-Section-1201-study.pdf>.